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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.646 OF 2005
IN
SUMMARY SUIT NO.2238 OF 2005

The Apex Urban Co-op. Bank of Maharashtra and Goa Ltd.).. Plaintiff

Versus

Madhya Pradesh State Industrial Development Corporation Ltd.).. Defendant

Mr. Zal Andhyarujina i/b.M/s.Little & Co. for the Plaintiff.

Mr.Shashi K. Jain for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 27TH MARCH 2006

P.C.:

. The Plaintiff, which is Multi State Co-operative Society, has filed the present Suit claiming an amount of Rs.89,96,58,612/- along with interest on Rs.59,95,00,000/- at the rate of 18% per annum. It is the case of the Plaintiff that an amount of Rs.55 crores was invested by them with the Defendant Corporation. This was on account of letter dated 20th November 1998 issued by the Defendant inviting deposits from the Plaintiff and offering to pay interest @ 16.5% per annum. This representation made by the Defendant was

supported by a certificate from its Chartered Accountants. The Plaintiff, therefore, deposited the following amounts :-

Sr. No.	Date of Deposit	Amount of Deposit (Rs.in crores)	Rate of interest payable Quarterly (%)	Date of Maturity
1	21.11.1988	10	16.5	21.11.2001
2	09.12.1998	10	16.5	09.12.2001
3	12.01.1999	10	16.5	12.01.2002
4	23.01.1999	20	16.5	23.01.2002
5	02.07.1999	05	16.5	02.07.2002

2. The Defendant issued post-dated cheques drawn on State Bank of Indore, Fort Mumbai. The Plaintiff called upon the Defendant to repay the amount deposited with them after the respective dates of maturity.

3. By letter dated 8th July 2002, the Defendant admitted that the inter corporate deposit of Rs.55 crores together with accrued interest was outstanding and that it would arrange to make payments of the amounts. Admittedly, this amount has not been repaid. The cheques issued in favour of the Plaintiffs have been dishonoured. This fact was brought to the notice of the Defendant. However, the Defendant did not pay the amounts. Therefore, the present Suit has been filed on the basis of the dishonoured cheques which were issued

in favour of the Plaintiff on a Bank in Mumbai.

4. The first submission of the learned Counsel for the Defendant is that the Plaintiff is not a registered society and, therefore, has no legal identity in order to file the present Suit. This contention must be stated only to be rejected. The Plaintiff is a registered society under the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to as the "1984 Act") and is deemed to be a Multi State Co-operative Society under the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as the "2002 Act"). The provisions of 2002 Act clearly provide that the societies registered under the earlier Act are deemed to be Multi State Co-operative Societies under the 2002 Act.

5. The next submission of the learned Counsel on behalf of the Defendant is that this Court has no jurisdiction to decide the claim of the Plaintiff as the Defendant has no establishment in the city of Mumbai. He submits that leave under Clause 12 of the Letters Patent Act has not been obtained by the Plaintiff and, therefore, the Plaint be rejected. The present Suit has been filed on the basis of the dishonoured cheques which were drawn on State Bank of Indore, Mumbai Branch and hence the Suit is maintainable. There is no need to

obtain leave under Clause 12 of the Letters Patent Act.

6. The next submission of the learned Counsel for the Defendant is that no money could have been advanced to the Defendant as it was not a member of the Plaintiff which is a *sine qua non* for obtaining a loan under the 2002 Act. In the alternative, it is submitted that if the Defendant is considered to be a member, proceedings for recovery of outstation amount would lie before the Arbitrator under Section 84 of the Arbitration and Conciliation Act. It is also submitted that the Plaintiff ought to have approached the Co-operative Court or the Debt Recovery Tribunal and not this Court. All these contentions are without merit. The Defendant did not seek a loan from the Plaintiff. The present case is not one for non-payment of the loan but for non-payment of an inter corporate deposit. Under Section 64 of the 2002 Act, investments of funds of a multi-state society can be made in certain establishments stipulated therein. The amount of Rs.55 crores is an inter corporate deposit invested with the Defendant in accordance with Section 64 and, therefore, there is no question of the Defendant either having to be a member of the Plaintiff society or the Plaintiff having to approach the Arbitrator. Furthermore, the Co-operative Court would have no jurisdiction in a

dispute such as the present one when the Defendant admittedly is not a member. Furthermore, the Debt Recovery Tribunal also would have no jurisdiction over the dispute raised in the present Suit. The learned Counsel for the Plaintiff has pointed out that the Reserve Bank of India has cancelled the banking licence granted to the Plaintiff with effect from 31st October 2003. Therefore, the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will not be attracted and the Plaintiff would not be able to approach the Debt Recovery Tribunal.

7. The next submission of the learned Counsel for the Defendant is that the Suit is barred by limitation. This submission is also not correct. The Defendant has admitted the debt by its letter dated 8th July 2002. The Suit has been filed within three years of this letter. The Suit has been filed on 7th July 2005. Therefore, the Suit is within limitation. All the deposits have matured from November 2001 onwards. The liability having been admitted in 2002, the Suit is, therefore, not barred by limitation. The letter dated 4th August 2002 which is also annexed to the Summons for Judgment merely reiterates that the Defendant has admitted its liability. Whether this letter has been procured from a person without authority is a matter

which will have to be decided later. The Suit in any case is not barred by limitation in view of the letter dated 8th July 2002.

8. According to the learned Counsel for the Defendant, two sets of proceedings have been initiated by the Plaintiff against the Defendant for the recovery of the same debt. The first proceeding is Company Petition No.2 of 2004 for winding up of the Defendant filed in the High Court of Madhya Pradesh at Jabalpur. The other proceedings are complaints filed under Section 138 of the Negotiable Instruments Act, 1881. It is now well settled that a Summary Suit is not barred because of the pendency of either winding up Petition or because proceedings under Section 138 of the Negotiable Instruments Act are initiated. Therefore, this submission is unacceptable.

9. The learned Counsel for the Defendant then submits that the rate of interest agreed under the contract was 16.5% to be payable to the Plaintiff on the amount deposited. He points out that the Plaintiff has claimed the unpaid amount at a higher rate of interest. However, the rate of 18% is claimed under Sections 79 and 80 of the Negotiable Instruments Act on the basis of the dishonoured cheques.. The mere fact that the

Defendant called upon the Plaintiff not to encash the cheques by the letter of 1/3rd May 2002, would not absolve the Defendant of the liability to make payment. In this view of the matter, all defences raised by the Defendant are hyper-technical.

10. One more defence which is raised is that after the separation of the Chhatisgarh State from Madhya Pradesh State, the funds of the Defendant are blocked and, therefore, they cannot honour the cheques. This is no reason for refusing a decree. The liability is admitted. There is no dispute that the cheques have been dishonoured. These cheques have been issued in Mumbai on the State Bank of Indore, Fort Branch, Mumbai. In these circumstances, the Plaintiff is entitled to a decree. However, with a view to give the Defendant an opportunity to defend the claim, the Defendant shall deposit an amount of Rs.89,96,58,612/- in this Court within twelve weeks from today, failing which the Plaintiff will be entitled to a decree.

11. If the Defendant deposits the amount as aforesaid, the Prothonotary & Senior Master to invest the same in a Fixed Deposit of a Nationalised Bank initially for a period of three years to be renewed thereafter till the pendency of the Suit. The Suit then be transferred to the list of Commercial Causes.

12. Written Statement to be filed within eight weeks. Discovery and inspection to be taken eight weeks thereafter.